

the maintenance of friendly intercourse with Indians; read 2d time and referred to committee on Indian Affairs.

A bill to release the county of Fannin, of a certain portion of the debt due to the citizens of that portion of the county now the county of Grayson; read 2d time, and referred to Select committee.

A bill to authorize the Governor to make the necessary preparations to transfer to the United States all Custom houses, and other places for the collection of revenue; read 1st time.

A bill to incorporate the Huntsville Academy; read 2d time, and laid on the table.

A bill to organize Justice's Courts, and define the power and jurisdiction of the same; read 3d time and passed.

A bill to authorize the corporation of Galveston to levy a tax for the support of free schools; read 3d time and passed.

Adjourned until Monday, 10 o'clock, A. M.

SENATE CHAMBER, }
 MONDAY March 23, 1846. }
 10 o'clock, A. M.

Senate met, pursuant to adjournment—roll called and a quorum present.

Journal of the preceding day was read and adopted.

Senator Hogg, Chairman of the committee on the Judiciary, to whom was referred, a bill to continue in office certain civil and militia officers, reported the same back to the Senate, and recommended its passage.

Senator Williams, Chairman of the committee on Public Lands, reported a bill, to that committee referred, to authorize the Commissioner of the General Land Office, to issue patents on land scrip, sold in New Orleans, and recommended its passage; also,

A bill to authorize the Commissioner of the General Land Office, to correct errors in field notes, with an amendment, and recommended its passage.

Senator Wood, Chairman of the Joint Committee, to whom was referred, that portion of Governor's message relating to the militia of the State, reported a bill to organize the militia, which was read 1st time.

A message was received from the House, informing the Senate of the passage of the following bills:

A bill to establish the county seat of Milam country.

A bill to locate the county seat of Wharton county.

A bill to incorporate the Grand Lodge of the Independent order of Odd Fellows of the State of Texas.

A bill to prescribe the time of the biennial meetings of the Legislature of the State of Texas; which were severally read 1st time.

Senator Wallace, Chairman of the committee on Privileges and Elections, to whom was referred, a joint resolution providing for persons living in the first Congressional District, to vote in the city of Austin, reported the same, and recommended its indefinite postponement, which report was adopted.

Senator McNeel, Chairman of the committee on Private Land Claims, to whom was referred, the petition of Mary Jones, reported the same, and recommended its rejection; report adopted.

Senator Phillips introduced a joint resolution providing for the sale of the public domain; read 1st time.

Senator Williams introduced the following bills:

A bill to incorporate the Lamar Academy.

A bill to incorporate Duvall Academy; which were severally read 1st time.

Senator Kinney introduced a bill to establish the second Judicial District; read 1st time.

Senator Phillips introduced a bill to organize Probate Courts; read 1st time.

A bill to prohibit persons from issuing bills, checks, promissory notes, or other paper to circulate as money, was ordered to be engrossed.

A bill to repeal the 8th and 11th sections of an act to incorporate Herman's University, was on motion, ordered to be engrossed.

A bill to provide for the location of the county seat of the county of Calhoun; laid on the table.

A bill to authorize the Governor to make the necessary preparations to transfer to the United States, all custom-houses and other places for the collection of imports or other foreign revenue; read 3d time and passed.

A bill for the regulation of pilots, was laid on the table.

A bill to repeal an act creating a board of medical censor was taken up and passed to 3d reading.

Senator Navarro, one of the committee, to whom was refer

red that portion of the Constitution relating to escheats, made the following report, which, on motion of Senator Phillips was ordered to come up with the report of the majority of the committee:

COMMITTEE ROOM, }
March 23d, 1846. }

*To the Honorable Edward Burleson,
President pro tem. of the Senate:*

SIR—The Select Committee, to which was referred a clause in the Constitution, respecting escheats, have reported to the Senate a bill on that subject: When I had the bill in hand as a member of that committee, it appeared to me in some points defective; but, as it was a matter which required reflection, and as the bill was long and had to be translated before I could examine it properly, I had not time to give my matured opinion, when the committee reported. I have therefore to request leave of the Senate, to now offer a separate report, and crave of the committee's courtesy indulgence for delay, which the above circumstances have caused.

I leave it to other Senators better acquainted with English law phraseology than myself, to determine whether the bill is, or is not liable to a Constitutional objection. It is my impression that those lands only, which revert to the State from lack of heirs, or devises, can be considered as escheated, and that those which so revert from inability in the owner to hold them, are to be classed among the forfeited. If so, the bill embraces two objects, as it treats of both classes. I however, make but a passing mention of this, merely to call to it the attention of others, and the remarks and amendment which I have to offer, are made without any reference to the above supposed objection.

It is my opinion, that the first section of the bill referred to, which is that on which all the others are based, has not the explicitness which the fundamental portion of so important a law requires, and that although it is founded on a principle of law generally recognized, it is liable from the aforesaid defect, to give in certain cases a misdirection to that principle.

No law ought by its vagueness, to subject any established exceptions to the operation of a general rule, or induce prosecutions which cannot eventually be sustained, or render prolonged investigation or appeal needful to fix the meaning or the legitimate scope of the statute, so long as the use of a few explicit terms would obviate those injuries.

It is a principle of law, recognized so far as I am aware of,

in all countries, that any property whose title fails from the legal inability of the owner to hold it, shall revert to the State and that such inability with regard to lands, attaches to alien but the operation of the rule in all enlightened community is modified by a due regard for vested, inherent, and equitable rights, as well as by the circumstances of the country where applied. It is another principle equally observed, that neither conquest nor division of empire can annul vested individual rights of property; hence, a person who by virtue of title and citizenship held real estate in Texas when it separated from Mexico, although he has not since become a citizen of Texas has still, during his life, a vested right to that property, which the mere change of government has not impaired, and to which the disability of an alien cannot lawfully attach.

It may be asserted that specifying such exceptions in the bill would be superfluous, since its true intent and scope, must eventually control all decisions made under it: to this I would reply, that no precision is superfluous that makes the meaning and object of a statute as clear to the ordinary citizen, as to the learned jurist, and thus *prevents* the evil of unjust litigation, instead of leaving it to the lingering remedy of a judicial test.

That the high principles of law recognized by the judiciary of the United States, and established by precedents, would eventually govern in the premises I have no doubt; but they would afford little redress to him who in his appeal to the should spend all that his case involves, or to him who would sooner abandon his defence than follow it up at such ruinous cost.

The disability which under a vague statute might be unjustly alledged against the class of persons above referred to, is not to be confounded with that disability, which could be fairly sustained against those on whom a competent tribunal has pronounced the sentence of forfeiture for crime. Those two positions of legal liability, continue distinct, though both existing in one individual; and, should they be found thus together the rights of the former position could never shield the holder of it from the penalties incident to the latter. If the alien of a certain class, has in law and equity a peculiar vested right he cannot be divested of it merely as an alien: but it gives him no immunity against the liabilities of a felon.

There is another class of proprietors whose case as I conceive, still more earnestly calls for a specification in the statute, to protect them. Both before and after the Independence

of Texas, numbers of persons who were not citizens, became by purchase and in good faith, the real owners of lands in the country. From ignorance of the laws, from the lack of clerical skill or intelligence in their agents, or in the authorities before whom those purchases were sought to be legalized, or from various accidental causes, many of those purchasers appear in the documents which avouch their right as the direct owners of real estate, which a rigid construction of the law would disable them from holding.

Those purchases benefited the country by bringing pecuniary means to its citizens, at a time when few other transactions could have done it; and any legal disability which the titles may involve, if owing neither to bad faith nor a wilful disregard of law, ought to have a remedy by law provided.

I do not assert that this class of proprietors have like the other a right in law, which investigation or appeal would confirm; but they certainly have one in equity, which from its very lack of aid in existing laws, is the more entitled to the consideration of this legislature. Those of the aforesaid class, who are, and at the time of purchase were citizens of the United States, will possibly find a guarantee of their rights in the existing laws of that Union, now that Texas is incorporated with it, but this I consider doubtful. The position could be assumed, and probably maintained, that their inability at the time of purchase, destroys all foundation on which their citizenship of the United States, could now base the ability of holding the property by the same purchase. Those of the same class who are not citizens of the United States, will certainly be without remedy, unless it be provided by our own Legislation.

I would not by any means, propose that those owners of land in Texas, who have never been other than aliens, should at once have the same right as citizens to hold it, but that ample time should be allowed them to dispose of such property, or to qualify themselves for possessing it, and that all the needful conditions and specifications, should be laid down in the new act, instead of being left to be gathered or inferred, supposing it could be done, from other laws.

I conceive that this would be in conformity with the principle which I have before laid down, that the inability of aliens to hold real estate, ought to be modified by a due regard to vested, inherent, and equitable rights, as well as by the circumstances of the country. If the concession which I recommend to the last mentioned class of alien proprietors, exceeds

in liberality what has usually been allowed to foreigners by more firmly established communities, it must be remembered, that our former uncertain situation, has already constrained the government to make similar concessions by law in certain cases, as in that of land scrip, and that the standing invitations we have held out to foreigners to take an interest in the fortunes of Texas, impose on our sense of justice, an extension of liberality to those, who in taking such interest, have acquired equitable though not legal rights to a portion of our soil.

For the reasons above stated, I therefore offer the accompanying substitute, for the first section of the bill referred to, and recommend any alteration which its adoption may make needful in the succeeding sections.

NAVARRO.

On motion, Senate adjourned till to-morrow 9 o'clock A. M.

SENATE CHAMBER, }
 TUESDAY, March 24, 1846. }
 10 o'clock, A. M.

Senate met pursuant to adjournment--roll called and a quorum present:

Journal of the preceeding day read and adopted.

Senator Hogg, chairman of the Judiciary committee, to whom was referred a bill defining the mode of conveying property in which the wife has an interest, reported that the majority of the committee are of opinion that the laws existing on that subject are ample, and therefore recommend the rejection of the bill.

Also, the petition of A. Houston--and ask to be discharged from the further consideration of the same.

Also, a bill to repeal the statutes on rents--and recommend its rejection.

Also, a bill to allow defendants to plead a partial failure of consideration, and recommends its passage.

Senator Jewett introduced a bill, to authorize the defendant in any case where an action is brought to try the titles to lands, to set forth any plea which it might be competent for the State to do; read 1st time.

Senator Parker introduced a bill, to organize the 2nd Judicial district; read 1st time.